



State of Washington  
DRAFT  
REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE

Changed Point of Diversion

**PRIORITY DATE**  
1909 (Class 38)

**WATER RIGHT NUMBER**  
Touchet River Adjudicated Certificate No. 217(A)

**MAILING ADDRESS**  
Cheryl Chatman  
106 Horse Show Lane  
Dayton, Washington 99328

**Total Quantity Authorized for Diversion**

MAXIMUM DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
0.14	cfs	10.5

**Purpose**

PURPOSE	WITHDRAWAL OR DIVERSION RATE	ANNUAL QUANTITY (AF/YR)
Irrigation	0.093 CFS from 04/01 to 10/15 0.140 CFS from 10/15 to 04/01	10.5

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
3				

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Columbia	Touchet River	Walla Walla River	32-Walla Walla

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Pump Station	2-010-38-035-3700	10N	38E	35	NE¼SW¼	46.2986°	-118.0256°

Datum: NAD83/WGS84

**Place of Use (See Attached Map)**

**PARCELS (NOT LISTED FOR SERVICE AREAS)**

2-010-38-035-3700

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

A tract of land located in the SE¼SW¼ and the NE¼SW¼ of Sec. 35, T. 10 N., R. 38 E.W.M., Columbia County, Washington, being Lot 2 of the Mann Short Plat, recorded in the Columbia County Auditor's Office in Book 6 at Pages 84 and 85, being more particularly described as follows:

Commencing at the SE corner of the Mann Short Plat, as recorded in the Columbia County Auditor's Office in Book 6 at Pages 84 and 85, said corner bears N 74°13'55" W 367.75 feet from the south quarter corner of Sec. 35, T. 10 N., R. 38 E.W.M.; thence N 22°07'35" W 734.77 feet to the point of beginning for this description; thence N 22°07'35" W 733.12 feet; thence N 39°11'29" E 232.57 feet; thence S 54°56'45" E 125.60 feet; thence N 54°04'35" E 729.08 feet, to the east line of the NE¼SW¼ of said Sec. 35, thence S 1°54'42" E 973.00 feet, along the east line of the NE¼SW¼ of said Sec. 35; thence S 67°52'25" W 643.94 feet to the point of beginning. All lying south of the Touchet River.

#### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	April 1, 2015	April 1, 2016

#### Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

#### Provisions

This authorization is subject to the provisions set forth in the decree of the Superior Court of Walla Walla, State of Washington, made and entered on the 19<sup>th</sup> day of September, 1929, recorded in Volume 18 of the Superior Court Journal at Page 1, otherwise known as Touchet River Decree No. 22066.

After all rights scheduled in the Touchet River Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15<sup>th</sup> to April 1<sup>st</sup>. The total diversion shall not exceed 10.5 acre-feet per acre for any one year beginning September 15<sup>th</sup>.

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Eastern Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Eastern Regional Office for forms to submit your water use data.

#### Department of Fish and Wildlife Requirement(s)

The intake(s) must be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>

**Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

**Proof of Appropriation**

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the water right. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

**Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

**Real Estate Excise Tax**

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia, WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

**Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of the change application to Touchet River Adjudicate Certificate No. 217(A), subject to existing rights and the provisions specified above.

**Your Right To Appeal**

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this       day of       2013.

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Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

## INVESTIGATOR'S REPORT

Dan Tolleson, Department of Ecology

Water Right Control Number CS3-\*34217](A)

Touchet River Adjudicated Certificate No. 217(A)

### BACKGROUND

#### Description and Purpose of Proposed Change

An application for change/transfer was submitted by Douglas and Janet Davis of Spokane, Washington, to Ecology on September 13, 2005. The application was then assigned to Ms. Cheryl Chatman on October 3, 2012. Ms. Chatman proposes to change the authorized point of diversion as granted under Touchet River Adjudicated Surface Water Certificate No. 217(A).

#### Attributes of the Existing Water Right and Proposed Change

	Authorized	Proposed
<b>Name</b>	Douglas and Janet Davis	Cheryl Chatman
<b>Priority Date</b>	The year 1909 (class 38)	
<b>Change Application Date</b>		9/13/2012
<b>Instantaneous Rate</b>	Up to 0.14 cfs	No change
<b>Annual Quantity</b>	42 af/yr	No change
<b>Purpose(s) of Use</b>	Irrigation of 7 acres	No change
<b>Period of Use</b>	Continuously	No change
<b>Place(s) of Use</b>	Approximation: Portions of E½SW¼ of Section 35, within, T. 10N., R. 38 E.W.M.	No change

#### Authorized Source of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River		10N	38E	35	SW¼SE¼		

#### Proposed Sources of Diversion

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Touchet River	2-010-38-035-3700	10N	38E	35	NE¼SW¼	46.2986°	-118.0256°

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian; Datum in NAD83/WGS84.

## Legal Requirements for Requested Change

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The following is a list of requirements that must be met prior to authorizing the proposed change.

### *Public Notice*

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. A Notice of this application was published in the Dayton Chronicle on March 1 and 8, 2006.

### *State Environmental Policy Act (SEPA)*

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

### *Water Resources Statutes and Case Law*

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.14.140(1)(i) states that a water right is not relinquished from nonuse while waiting for a final determination from the department of ecology on a change application filed under RCW 90.03.250, 90.03.380, or 90.44.100.

## INVESTIGATION

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In considering the proposed application, the investigation included, but was not limited to, research and review of: (1) appropriate rules and statutes; (2) other water rights, permits, and claims; (3) USGS topographic maps and aerial photographs; (4) diversion works and place of use; (5) Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32 and Watershed Planning; (6) State of Washington Irrigation Guide (Natural Resources Conservation Service 1997); (7) Touchet River Adjudication; and (8) discussions with Department of Ecology regional program staff.

A field investigation was conducted, by Dan Tolleson and Jeff MacLennan on November 7, 2012. The project is located approximately one mile to the southwest of Dayton, Washington. The water right is located in the Walla Walla Basin, which is managed under Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin, WRIA 32.

The place of use is a lot located within the bottom-land, primarily south of the Touchet River within the E½SW¼ of Section 35, within, T. 10 N., R. 38 E.W.M. Most of the northern portion of the lot is riparian vegetation located along the river. The southern portion of the lot is pasture land, with a house and outbuildings. The pasture was recently used for dry land grain crops. The irrigation system consists of a partially constructed mainline set up for a pressurized sprinkler system. The northern portion of the place of use will be removed from the legal description since it is not irrigable.

The authorized point of diversion, which has been abandoned, was a ditch diversion from the Touchet River. The authorized point of diversion is proposed to be changed to the currently existing pumping station located directly downstream. The proposed point of diversion consist of a centrifugal pump, meter and fish screen. The system is mostly completed but has not been put to use, since the applicant has been waiting for this change to be approved.

## History of Water Use

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Aerial photographs were used to help verify the extent of development, historical and beneficial use of this project. The place of use consists of a 14.8 acre parcel of land, most of which is covered by tree and riparian vegetation along the Touchet River. In the last few decades only three acres of land were irrigated within the place of use. The last time these acres were irrigated was in 2005, the year the change application was submitted. Since a change application was filed prior to five years of nonuse, the three acres of irrigation have not been relinquished in accordance with RCW 90.14.140(1)(I) and are available for change. The remaining four acres of irrigation under this right are relinquished from non use and are not available for change.

It is estimated that the maximum instantaneous quantity authorized under this right was still being used when last irrigated despite the fact that much of the irrigated acres not being put to beneficial use. In addition, the proposed diversion works are estimated to produce the maximum instantaneous quantities authorized. Production from the pump station cannot exceed the maximum authorized quantity which are 0.093 cfs (38 gpm) from 4/1 to 10/15 and 0.140 cfs (62 gpm) from 10/15 to 4/1.

This water right has a junior priority date in comparison to other rights within this basin and is subject to regulation in dry years. The notes from the former Watermaster indicate this right was last regulated or turned off in 2004 and 2005.

The maximum authorized water duty of this certificate is 6-acre feet per year, per acre. According to the adjudication, after all rights scheduled in the Touchet River Decree No. 22066 are filled, the surplus water is allotted in the order of priority in amounts sufficient to increase the rate to the quantity allotted for the period from September 15<sup>th</sup> to April 1<sup>st</sup>. Reportedly this right was historically used to irrigate a variety of crops with pasture having the highest water duty. The State of Washington Irrigation Guide (WA210-VI-WAIG) states that a 2.6 acre-feet, per acre, for pasture is required in the Dayton area. The most recently used system of pressurized sprinklers is estimated to be 75% efficient. At a 75% efficiency rate of application, the approximate maximum water duty, for the crop listed above is up to a maximum of 3.5 acre feet per year, per acre. This results in an allocation of 10.5 acre-feet per year for the irrigation of 3 acres.

### Proposed Use

The primary purpose of this change is to correct the location of the point of diversion. The applicant proposes to move the point of diversion downstream to the currently constructed location.

### Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing water right certificates, permits, and claims in surrounding area of the Chatman Project. The search focused primarily on Section 35 of T. 10 N., R. 38 E.W.M. The review of Ecology records shows no other water rights appurtenant to the authorized place of use.

### Impairment Considerations

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, not including earlier filed applications (HB 1832); and/or 2) to prevent the beneficial use of the water to which one is entitled; and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The applicant is requesting authorization to change the authorized point of diversion of Touchet River Adjudicated Certificate No. 217(A). She proposes to move the authorized point of diversion downstream approximately 1,000 feet to an existing pump station. There is no significant change in the stream or major diversions between the authorized and proposed points of diversion. Therefore, no impairment is anticipated by changing the authorized point of diversion. The proposed change will not increase the amount of water withdrawn from the Touchet River nor will it increase or expand the right.

### Consideration of Protest and Comments

No protests were filed against this application.



## Conclusions

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In conclusion, there is a water right available for change under Touchet River Adjudicated Certificate No. 217(A). In accordance with Chapters 90.03 RCW, approval of this application to change the authorized point of diversion will not enlarge the quantity of water historically authorized, nor will it impair existing rights provided the terms and conditions above are followed.

The amount of water recommended is a maximum limit that shall not be exceeded, and the water user may only use that amount of water within the specified limit that is reasonable and beneficial. This authorization does not increase in any way the original amounts authorized by the certificate.

## RECOMMENDATIONS

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above

### *Purpose of Use and Authorized Quantities*

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

0.093 cfs from 4/1 to 10/15  
0.140 cfs from 10/15 to 4/1  
10.5 acre-feet per year  
Irrigation of 3 acres

### Point of Diversion

NE¼SW¼ of Section 35, Township 10 North, Range 38 East W.M.

### Place of Use

As described on Page 1 of this Report of Examination.

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Dan Tolleson, Report Writer

Date

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